

IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
CARDIFF DISTRICT REGISTRY
(His Honour Judge Graham Jones
(Sitting as a Deputy High Court Judge))

Royal Courts of Justice
The Strand
London WC2

Dater: Monday 26th April, 1999

B e f o r e:

LORD JUSTICE BROOKE

(1) W HAROLD JOHN (METALS) LIMITED (2) W HAROLD JOHN & CO
LIMITED\Applicants/Claimants

\- v -\

\ARTHUR GAIT & CO (A Firm)\Respondent/Defendant

(Computer Aided Transcript of the Palantype Notes of
Smith Bernal Reporting Limited, 180 Fleet Street,
London EC4A 2HG
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Official Shorthand Writers to the Court)

MR T DUTTON QC (Instructed by Messrs Robert Davies Partnership, Usk, Monmouthshire NP2
1LV) appeared on behalf of the Applicants

MR M DOUGLAS QC (Instructed by Messrs Hugh James, Cardiff CF1 4QB) appeared on behalf of
the Respondent

J U D G M E N T (As approved by the Court)

LORD JUSTICE BROOKE: In this matter the plaintiffs apply for security for costs of the appeal. This is a very substantial accountants' negligence action. The judge gave judgment, after a trial lasting 28 sitting days, for nearly £1 million, plus over £600,000 for added interest, and the plaintiffs' legal bill, pending taxation of costs, was over £800,000. There was a finding of 25 per cent contributory negligence. But for that finding, the amount of the judgment would have been higher.

The circumstances in which the defendants (who had a certain amount of professional liability insurance cover) are exposed to an application for security for costs are set out in the affidavit evidence. Mr Douglas concedes that as a matter of principle the court is in a position where it is entitled to order security and that there are no special features in the case which warrant any particular exercise of the court's discretion. Accordingly, the only question I am asked to answer is: how much?

The parties have put before me their rival contentions. I, for my part, can see nothing unreasonable about the plaintiffs' solicitor's proposed hourly charging rate, or the proposition that he ought personally to be involved, and involved in attending counsel at the hearing rather than delegating it to a more junior member of his staff. I am told that this is a small firm which undertakes heavy litigation of this kind. In my judgment, when as much is involved for the clients they are entitled to have the personal attendance of a partner who is *au fait* with the issues.

The central issues on this application largely turn round the reasonableness of the amount of solicitors' charges and expenses, both in terms of preparation and in terms of the week the partner will be attending counsel, and more particularly on the reasonableness of counsel's fees for which the princely sum of £72,500 has been suggested as reasonable.

Mr Dutton has done his best to justify the reasonableness of the amount of leading counsel's time, backed up by junior counsel's time, in circumstances where it is the leader who has the case at his

fingertips, having been involved as a junior throughout the trial, and the reasonableness of the amount of time that is spent in preparation by the solicitor.

In my judgment, there is a danger of triple-manning in the kind of figures Mr Dutton has suggested, although I have no doubt at all that a substantial volume of work will be needed in order to prepare the plaintiff's case appropriately for the hearing of the appeal. It needs professional skill of a pretty high order to assemble the mass of documents and evidence in a case of this scale into a manageable form for the Court of Appeal. Time spent on reconnaissance, time spent on preparation, provided it is not obviously excessive, is never really wasted.

Doing the best I can on these figures, I consider that that there is no real issue on the costs to date of £1,350. I would suggest for the purposes of security a figure of £5,000 for the solicitor's attendance, travelling and expenses in the context of the hearing would be appropriate. I suggest a sum of £63,000 would be appropriate for the global sum to cover counsel's fees, and I would suggest a sum of £6,000 would be appropriate for preparation. Those figures would get just over £75,000, which I would round down to £75,000. That would be the figure that I would order for security.

ORDER: Security for costs ordered in the sum of £75,000, to be paid into court within 28 days, unless the parties agree it is successfully achieved within 28 days by some other form of mechanism. Appeal stayed in the meantime. If security is not provided within 28 days, then 7 days thereafter the appeal will stand dismissed. Defendants to pay the Plaintiffs' costs of this application in any event.

(Order not part of approved judgment)
